

NOT TO BE INCLUDED
IN BOUND VOLUMES

PJMc
Chicago, IL

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LABRIOLA BAKING COMPANY

Employer

and

Case 13-RD-089891

TEAMSTERS LOCAL 734

Union

and

JUVENTINO SILVA

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held October 8, 2014, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Second Election. The tally of ballots shows 14 for and 8 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions¹ and briefs, has adopted the Regional Director's findings and recommendations,² and finds that a certification of representative should be issued.

¹ The Employer excepts to the Regional Director's decision to not conduct a hearing. Under Sec. 102.69(d) of the Board's Rules and Regulations, a Regional Director shall conduct a hearing if he or she concludes that the objections raise substantial and material factual issues. In order for the Board to conclude that a Regional Director's decision to not conduct a hearing was unreasonable, the objecting

CERTIFICATION OF REPRESENTATIVE

party has the burden of coming forward with evidence that establishes a *prima facie* case in support of its objections. See *Park-Chevrolet Geo, Inc.*, 308 NLRB 1010, 1010 fn. 1 (1992). In this case we find that, even presuming the truth of the Employer's proffered evidence and contentions, it failed to establish a *prima facie* case in support of its objections. Therefore, the Regional Director did not err here. *Durham School Services, LP*, 360 NLRB No. 108, slip op. at 1 (2014).

² In adopting the Regional Director's recommendation to overrule Employer Objection 1, we find that this objection is improper because it does not concern the conduct of this election or conduct affecting the results of this election as required by Sec. 102.69(a) of the Board's Rules and Regulations. Instead, Objection 1 is essentially a motion for reconsideration of the Board's Decision and Direction of Second Election in *Labriola Baking Co.*, 361 NLRB No. 41 (2014), and, as such, is untimely under Sec. 102.65(e)(2) of the Rules and Regulations.

Although Member Johnson adheres to the dissenting position he expressed jointly with Member Miscimarra that the results of the prior election in this proceeding should not have been set aside, 361 NLRB No. 41 slip op. at 4–9, he agrees with his colleagues' rationale for denying reconsideration of the prior decision and overruling Employer Objection 1.

In adopting the Regional Director's recommendation to overrule Employer Objection 2, we affirm his finding that the Employer failed to establish that Noe Ornelas was the Union's agent. Additionally, even assuming, *arguendo*, that Ornelas was the Union's agent, we affirm the Regional Director's finding that the Employer failed to establish that Ornelas's alleged threat of job loss to Doug Templeton was objectionable. A union agent's alleged threat of job loss to an employee is objectionable only if the employee could reasonably believe that the union or its agent had the ability to carry out the threat. See *Pacific Grain Products*, 309 NLRB 690, 691 (1992); *Janler Plastic Mold Corp.*, 186 NLRB 540, 540 (1970); cf. *Lyon's Restaurants*, 234 NLRB 178, 179 (1978). Here, the Employer did not proffer any evidence that established that Templeton could have reasonably believed that the Union or Ornelas, a rank-and-file employee, had the ability to carry out the alleged threat. Further, Ornelas's alleged threat was only directed to one employee, there is no evidence it was disseminated to other bargaining unit employees, Ornelas apologized for his alleged threat, and the Union won the election by a six vote margin. See *Taylor Wharton Division*, 336 NLRB 157, 158 (2001).

Member Johnson finds it unnecessary to pass on whether Ornelas was the Union's agent because, as discussed above, Ornelas's alleged threat of job loss to an employee was not objectionable under the standard for evaluating party conduct.

For the reasons stated by the Regional Director, we also reject the Employer's allegation that the Union engaged in objectionable electioneering under *Milchem, Inc.*, 170 NLRB 362 (1968). See *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982), *enfd.* 703 F.2d 876 (5th Cir. 1983).

In the absence of exceptions, we adopt pro forma the Regional Director's recommendation to overrule Employer Objection 3.

IT IS CERTIFIED that a majority of the valid ballots have been cast for Teamsters Local 734, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time route sales drivers and relief sales drivers employed by the Employer at its facility currently located at 3701 W 128th Pl, Alsip, IL; but excluding all technical and administrative employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

Dated, Washington, D.C., April 17, 2015.

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD